

- (3) Whether respondent is liable for payment of \$16,922.30 of medical expenses for treatment of claimant's injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the whole record and hearing arguments of the parties, the Appeals Board finds as follows:

The Administrative Law Judge found that the claimant was entitled to permanent partial general disability benefits based on a twelve and three-fourths percent (12.75%) functional impairment rating to the claimant's left hand. As a result of claimant's left-hand injury, medical treatment totalling \$16,922.30 was required. The Administrative Law Judge, in her Award, found that the parties stipulated that the respondent had paid medical expenses in this amount. However, during oral argument before the Appeals Board, the parties agreed that these medical expenses remain unpaid and were an issue to be decided in this appeal.

The Appeals Board finds and concludes that the Administrative Law Judge's Award should be affirmed and that the medical expenses at issue should be ordered paid as authorized medical expenses. The Appeals Board also finds that the Administrative Law Judge's findings and conclusions of law are correct and reasonable and are adopted by the Appeals Board as its own to the extent they are not inconsistent with the findings set forth below.

Claimant establishes by his testimony that he injured his left hand while working for the respondent when a board fell on his hand as he was unloading a truck. The exact date of the accident is unable to be determined by the evidence, but it is established that the accident occurred sometime in the month of April 1992. Because the claimant's left hand did not become symptomatic until approximately two (2) weeks after the accident, he did not report the accident to respondent until that time. When his hand started hurting and swelling, he testified that he told both his supervisor, Matt, and his foreman, Mr. Davis, of the accident. Neither of these individuals offered the claimant medical treatment and both of them told the claimant that his problems were not work related.

Claimant finally went on his own to St. Francis Regional Medical Center in Wichita, Kansas, for medical treatment on May 8, 1992. The emergency room records indicate that the claimant had massive swelling and pain in his left hand. The records relate that claimant had noticed such swelling on Monday. The evidentiary record establishes that May 8, 1992 was on Friday, so the claimant sought medical treatment within four (4) days from the time that his left hand became symptomatic. Claimant was immediately hospitalized from May 8, 1992 through May 19, 1992. During his hospitalization, two (2) surgeries were performed on his left hand and he received antibiotic treatment for the infection.

At the respondent's request, the claimant was examined by J. Mark Melhorn, M.D., an orthopedic surgeon specializing in hand and upper extremity problems, on December 11, 1992. After Dr. Melhorn took a history and reviewed the claimant's past medical records, it was his opinion that claimant's work-related injury to his left hand resulted in a permanent functional impairment of twelve and three-fourths percent (12.75%). Dr. Melhorn further opined that the claimant should be released to return to regular work without restrictions and that no further medical treatment would be required.

Respondent contends that since the claimant did not report the accident within ten (10) days as required by K.S.A. 44-520 (Ensley), that it was prejudiced by the inability for early diagnosis and treatment. Respondent argues that Dr. Melhorn's testimony establishes that earlier treatment would have resulted in less functional impairment and the medical expenses would have been substantially decreased.

The Appeals Board disagrees with the respondent's contention that it was prejudiced because claimant did not notify the respondent within the ten (10) days as required by the notice statute. Claimant testifies that when his hand became symptomatic he did notify both his supervisor and foreman. These individuals did not provide immediate medical treatment and, in fact, told the claimant that his problem was not work related. After only four (4) days from the time that his hand became symptomatic, the claimant, on his own, sought medical treatment. Dr. Melhorn opined that he could not realistically provide an answer within reasonable medical probability that a four-day period would have made a significant difference in the medical treatment.

In regard to payment of medical expenses, the parties stipulated the claimant received medical treatment in the amount of \$16,922.30 and this amount was not disputed on appeal. Accordingly, the Appeals Board, having found that the respondent was not prejudiced, finds that medical expenses for treatment of claimant's left-hand injury in the amount of \$16,922.30 is ordered paid as authorized medical by the respondent.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Shannon S. Krysl, dated March 24, 1994, should be, and the same is hereby, affirmed.

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Jose Santos Rivas, and against the respondent, Dondlinger & Sons Construction Company, and its insurance carrier, Builders' Association Self-Insurers' Fund, for an accidental injury sustained on April 4, 1992, and based on an average weekly wage of \$318.55.

Claimant is entitled to 19.13 weeks of permanent partial general disability at the rate of \$212.38 per week for a total award of \$4,062.83 for a 12.75% permanent partial general disability of the claimant's left hand.

As of May 9, 1995, the entire amount of \$4,062.83 is due and owing and is ordered paid in one lump sum, less any amounts previously paid.

Medical expenses in the amount of \$16,922.30 are ordered paid by the respondent as authorized medical.

IT IS SO ORDERED.

Dated this ____ day of May, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Russell B. Cranmer, Wichita, KS
Wade A. Dorothy, Lenexa, KS
Shannon S. Krysl, Administrative Law Judge
George Gomez, Director